IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11618 of 2004

WITH

CIVIL APPLICATION No.9615 of 2004

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GE LIGHTING INDIA LTD NOW KNOWN AS GE (INDIA) PVT - Petitioner(s)

Versus

GUJARAT MAZDOOR PANCHAYAT & 1 - Respondent(s)

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Appearance :

SHRI KS NANAVATI, SR. ADV. FOR NANAVATI ASSOCIATES for Petitioner.

MRS SANGEETA N PAHWA for Respondent No(s).: 1.

RULE SERVED BY DS for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI

Date : 03/08/2005

CAV JUDGMENT

In the present petition, the petitioner-employer has challenged the legality and validity of the order dated 12th July 2004 passed by the Industrial Tribunal, Nadiad. To appreciate the controversy involved in the petition, facts in nutshell may be recorded at this stage.

2. The petitioner is a company registered under the provisions of the Company Act, 1956. Earlier, respondent No.1 herein, viz. Gujart Mazdoor Panchayat (hereinafter to be referred to as “respondent No.1 Panchayat”) was representing all the workmen employed by the petitioner Company and periodical settlements were being arrived at between the petitioner company and respondent No.1 Panchayat. Respondent No.1 Panchayat raised various demands for revision of wages and other service conditions applicable to the workmen by charter of demands dated 21st April 1999. The petitioner Company however did not find it possible to accede to the said demands. It appears that sometime thereafter, a new Union called G.E. Lighting Employees Union, respondent No.2 herein (hereinafter to be referred to as “respondent No.2 Union”) was formed by break away group of workmen. It is not in dispute that presently respondent No.2 Union represents majority of the workmen employed by the petitioner Company.

3. For adjudication of the demands with respect to the wage structure, etc. respondent No.1 Panchayat raised an industrial dispute which was referred for adjudication before the Industrial Tribunal, Ahmedabad being reference (IT) No.168 of 2000. This reference was later on transferred to the Industrial Tribunal, Nadiad and was re-numbered as Reference (IT) No.162/2001.

3.1 Respondent No.2 Union also sought and was granted two references against the petitioner Company being Reference (IT) Nos.256 and 257 of 2000 before the Industrial Tribunal, Ahmedabad. The demands raised by respondent No.2 Union in these references also pertained to the wage-structure of the workmen. These references were also transferred to the Industrial Tribunal, Nadiad and were re-numbered as Reference (IT) No.159 and 163 of 2001.

3.2 During the pendency of these references, the petitioner Company entered into three settlements dated 16.3.2001, 21.5.2001 and 7.6.2003 with respondent No.2 Union. On 2nd October 2003, the petitioner Company after producing all these three settlements before the Industrial Tribunal, requested the Tribunal to make an

award in terms of the settlements and dispose of the references including the reference made at the instance of respondent No.1 Panchayat. On 2.12.2003, the petitioner Company made another application before the Industrial Tribunal to consolidate all the three references. Respondent No.1 Panchayat opposed such an application whereas respondent No.2 Union agreed for consolidation of the references and for passing award in terms of the settlement.

3.3 It was in these applications filed by the petitioner Company that the Industrial Tribunal, Nadiad passed the impugned order dated 12th July 2004 rejecting the applications filed by the petitioner Company.

4. In its order dated 12th July 2004, the Industrial Tribunal was pleased to come to the conclusion that the settlement under section 18(1) of the Industrial Disputes Act, 1947 (hereinafter to be referred to as “ID Act”) binds only the parties to the agreement and none else. The Tribunal, therefore, found that the settlement Ex.35 produced by the petitioner Company being one under section 18(1) of the ID Act, the same would bind only the petitioner Company and respondent No.2 Union which had entered into such a settlement with the Company and the

members of respondent No.1 Panchayat cannot be bound by such a settlement. In conclusion, the Tribunal passed the following order:

> "32. In view of what is discussed above, this Tribunal is of the opinion that since the settlement annexed to Exh.35 is one under Sec. 2(p) it binds only the parties to it and none else and hence no award can be passed on the basis of the said settlement that the union has already settled its dispute with the company by taking recourse to Sec.2(p), (one of the modes of settling the dispute), it is now not open to the union to get another finality by seeking an award in terms of the said settlement, because it would be altogether a different mode of settling the dispute under section 2(b) of the Act; that there is no law which empowers the Tribunal to convert a settlement under Sec.2(p) into an award under Sec.2(b); that the circumstances that the settlement was arrived at within four days after denying its capacity even to pay by way of interim relief/award by the company speaks volume of facts about the justness and fairness of the settlement. So far as the application for consolidation of the three reference cases is concerned, the members of the union have given up any claims whatsoever in the said three reference cases by signing the declaration form annexure-3 and therefore, the union should walk out of the adjudication proceedings and allow the company and the panchayat to resolve the disputes through adjudication or an agreement which may or may not be

a settlement under sec.2(p). Thus, there being no merits in application Ex.35 or application Ex.117 according to this Tribunal, the same are required to be dismissed. I accordingly pass the following order:

Order

The application Ex.35 and Ex.177 are dismissed with no order as to costs."

5. Appearing for the petitioner-Company learned Senior Advocate Shri K.S.Nanavati submitted that respondent No.2 Union represents majority of the workmen employed by the petitioner company and when settlements were arrived at between the petitioner Company and respondent No.2 Union, it should have been appreciated that large number of workmen had agreed to abide by the terms of settlements and that therefore, award in terms of such settlements should have been made by the Industrial Tribunal, since the settlement was legal, just and fair. It was further submitted that the Industrial Tribunal could not have ignored the settlements arrived at between the petitioner Company and respondent No.2 Union without there being any basis to do so. It was contended that respondent No.1 Panchayat represents less than 25 per cent of the workmen employed by the petitioner Company and when a Union representing more than 75 per cent of

the work-force had agreed to certain terms and conditions, such agreement would bind the minority Union also. It was contended that the concept of collective bargaining is accepted in the industrial law and when overwhelming majority of workmen had accepted certain set of terms and conditions, it is not possible for a Union espousing the cause of minority work-force to oppose such a settlement and insist on adjudication of their demands. It was contended that the Tribunal gravely erred in rejecting the request of the petitioner for consolidation of the references. It was submitted that the request for consolidation of the proceedings was an innocuous prayer and the same ought to have been granted all the more so since by an order dated 21st July 2001, the Tribunal had earlier, according to the learned counsel, already ordered consolidation of the proceedings. Learned counsel for the petitioner relied on number of decisions including those of the Hon'ble Supreme Court, reference to which will be made at a later stage.

6. Appearing for respondent No.1, Mrs.Pahwa opposed the petition. She sought to support the decision rendered by the Industrial Tribunal. She contended that the Tribunal did not commit any error in rejecting the applications

filed by the petitioner Company. She submitted that the settlement arrived at between the Company and respondent No.2 Union was not in course of conciliation proceedings. The settlement being one covered under section 18(1) of the ID Act would bind only the parties to the settlement and to none else. She, therefore, contended that despite the settlement between the petitioner Company and respondent No.2, respondent No.1 Panchayat would have an independent right to proceed further with their demands and have the reference adjudicated upon by the Industrial Tribunal. She pointed out that even as per the settlement between the parties, the revised wage structure is to be made applicable only to those workmen who signed the formal agreement. She submitted that the members of respondent No.1 Panchayat have neither signed the agreement nor have been given the revised wages. She strongly relied on the decision of the Hon'ble Supreme Court in the case of Tata Chemicals v. Workmen, Tata Chemicals, AIR 1978 SC 828 to canvass that even the minority union has a right to raise an industrial dispute and to have the same adjudicated upon. She additionally submitted that when the dispute was raised by respondent No.1 Panchayat and the reference was made, the settlements were not entered into between the parties.

7. Before considering the rival submissions, relevant provisions of the ID Act can be noted. Section 2(p) of the ID Act defines the term “settlement”. It, inter alia, provides that a “settlement” means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding. Section 2(p) of the ID Act reads as follows:-

> “(p) “settlement” means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.”

Section 12 of the ID Act provides for duties of conciliation officers. Sub-section (1) of section 12 requires a conciliation officer to hold conciliation proceeding where any industrial dispute exists or is apprehended. Sub-section (2) of section 12 of the ID Act requires the conciliation officer to investigate the

dispute and all matters affecting the merits for the purpose of bringing about a settlement of the dispute and authorises him to do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. Sub-section (3) of section 12 provides that if a settlement of the dispute or any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer shall send a report thereof to the appropriate Government or an authorized officer together with memorandum of the settlement. Sub-section (3) of section 12 reads as follows:-

> "(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute."

Sub-section (4) of section 12 provides that if no such settlement is arrived at, the conciliation officer shall send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for

bringing about a settlement thereof and statement and reasons on account of which settlement could not be arrived at. Sub-section (5) of section 12 of the ID Act provides that if on consideration of report referred to in sub-section (4) the appropriate Government is satisfied that there is a case for reference to the Board, Labour Court, Tribunal or National Tribunal, it may make such a reference. If the Government decides not to make a reference, it has to record and communicate to the parties concerned the reasons therefor.

7.1 From the provisions contained in section 12 of the ID Act, it can be seen that one of the prime duties of the conciliation officer where an industrial dispute exists or is apprehended is to endeavour to bring about a fair and amicable settlement of the dispute. If such a settlement is arrived at between the parties, the Conciliation Officer has to send a report thereof to the appropriate Government and if no such settlement is arrived at, under sub-section (4) of section 12 of the ID Act, the conciliation officer is required to send a failure report stating the reasons on account of which, in his opinion, a settlement could not be arrived at. Upon consideration of the failure report sent by the conciliation officer, the appropriate Government if it is

satisfied that there is a case for reference to the appropriate Court or the Tribunal, may make such a reference. It can thus be seen that the machinery provided under the ID Act for conciliation of disputes is an important step in the process of resolving disputes between the employer and the workmen. If conciliation efforts succeed and an amicable settlement is arrived at between the parties, the conciliation officer has to make a report thereof to the Government. In case of failure of the efforts, the conciliation officer has to send his failure report. The conciliation officer has to ensure that the settlement is fair and amicable. Thus the settlement arrived at between the parties during conciliation proceedings with the active participation of the Conciliation Officer is put on a higher pedestal than the settlement arrived at between the parties outside of the conciliation proceedings. Section 2(p) of the ID Act also recognizes two different kind of settlements, one arrived at during the course of conciliation proceedings and another arrived at otherwise than in course of conciliation proceedings, but which has been signed by the parties in such a manner as may be prescribed.

7.2 Section 18 of the ID Act also draws distinction between above two kinds of settlements. Sub-section (1)

of section 18 of the ID Act provides that a settlement arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Sub-section (3) of section 18 on the other hand provides, inter alia, that a settlement arrived at in the course of conciliation proceedings shall be binding on all parties to the industrial dispute; all other parties summoned to appear in the proceedings as parties to the dispute; heirs, successors or assigns of the employer and all persons who were employed in the establishment or part thereof to which the dispute relates on the date of dispute and all persons who subsequently become employed in the establishment or part thereof. Section 18 of the ID Act reads as follows:

> "18. Persons on whom settlements and awards are binding – (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.
>
> (2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

8. The combined reading of section 2(p), section 12 and section 18 of the ID Act makes it abundantly clear that there is a vital difference between a settlement arrived at in course of conciliation proceedings between the

employer and workmen and one arrived at by agreement between the parties outside the conciliation proceedings. While the settlement arrived at between the employer and the workmen during the course of conciliation proceedings binds not only all the parties to the dispute, the same binds also the heirs, successors and assigns of the employer on one hand and all persons who were employed in the establishment on the date of the dispute and all the persons who subsequently become employed in such an establishment on the other. This distinction has been recognized and reiterated by the Hon'ble Supreme Court in number of decisions.

9. In the case of Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corporation Ltd., (1991) 1 SCC 4, in para 8 of the judgment, the Hon'ble Supreme Court observed that “it may be seen on a plain reading of sub-sections (1) and (3) of Section 18 that settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings and (ii) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is

binding on all parties to the industrial dispute, to all others who where summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. Therefore, a settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object, obviously is to uphold the sanctity of settlements reached with the active assistance of the Concilation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority”. It would not be necessary to list the long line of decisions of the Hon'ble Supreme Court

reiterating this settled principle.

10. In the present case, it is not in dispute that the settlements arrived at between the petitioner Company and respondent No.2 Union were not during the course of conciliation proceedings. These settlements were clearly outside the conciliation proceedings. Therefore the settlements would though obviously bind the parties to the settlements, namely, the petitioner Company and respondent No.2 Union, the question is whether such a settlement can be thrust upon respondent No.1 Panchayat. In other words, the question is, can the settlements in question arrived at between the petitioner Company and respondent No.2 Union which are admittedly settlements outside the conciliation proceedings bind respondent No.1 Panchayat and preclude adjudication of the dispute raised by respondent No.1 Panchayat long before such settlements were arrived at between the such parties.

11. In this regard, I find that the learned counsel for respondent No.1 is justified in placing reliance on the decision of the Hon'ble Supreme Court in the case of Tata Chemicals Limited (supra). In the said case, it was the case of the employer-Company that a settlement dated 14th December 1973 between the appellant Company and the

Employees Union covered the pending demand regarding variable dearness allowance sponsored by the Sangh and the benefit accruing from the settlement was taken by the entire batch of workmen and that therefore, the reference made by the State Government with respect to variable dearness allowance was invalid and the Tribunal had no jurisdiction to adjudicate upon the same. On the other hand, it was the contention of the Sangh that the settlement in question was binding only on the parties thereto and Sangh not being a signatory to the settlement, it was open to it, even though it was a minority Union, to sponsor the demand in question and to the Government to make a reference. In this regard, the Hon'ble Supreme Court formulated a question, viz. whether the aforesaid reference by the Government was invalid and the Industrial Tribunal was incompetent to make the award in question during the currency of settlement arrived at by the Employees' Union which had been duly recognised under the Code of Discipline. The Hon'ble Supreme Court observed that there are two categories of settlements, (i) a settlement which is arrived at in course of conciliation proceedings i.e. which is arrived at with the assistance and concurrence of the Conciliation Officer who is duty bound to promote a right settlement and to do everything he can to induce the

parties to come to a fair and amicable settlement of the dispute and (ii) a written agreement between employer and workmen arrived at otherwise than in the course of conciliation proceeding. It was observed that for the validity of the second category of settlement, it is essential that the parties thereto should have subscribed to it in the prescribed manner and a copy thereof should have been sent to an officer authorised in this behalf by the appropriate Government and the Conciliation Officer. The Hon'ble Supreme also noted that different consequences of the aforesaid two categories of settlements as set out in section 18 of the ID Act. It was observed that a bare perusal of section 18 of the ID Act would show that whereas a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceedings is binding only on the parties to the agreement, a settlement arrived at in the course of conciliation proceeding under the Act is binding not only on the parties to the industrial dispute but also on other persons specified in clauses (b), (c) and (d) of sub-section (3) of section 18 of the Act. Having thus noted the distinction between the two kinds of settlement, the Hon'ble Supreme Court in para 16 of the decision observed that as the said agreement not having been arrived at during the course of

conciliation proceedings, it could not, according to section 18 (1) of the Act bind any one other than the parties thereto. It was observed that the fact that the Employees Union which has been duly recognized under the Code of Discipline arrived at an aforesaid agreement with the Company could not operate as a legal impediment in the way of the Sangh which was not a party to the agreement to raise a demand or dispute with regard to variable dearness allowance. It was found that even the minority Union can validly raise an industrial dispute since section 2(k) of the Act does not restrict the ambit of definition of 'industrial dispute' to a dispute between an employer and recognised majority union but takes within its wide sweep any dispute or difference between employer and workmen including a minority union of workmen which is connected with employment or terms of employment or conditions of labour of workmen. Following portion of the said paragraph can be reproduced :

> “..... The conclusion that a minority union can validly raise an industrial dispute gains support form S.2(k) of the Act which does not restrict the ambit of the definition of 'industrial dispute' to a dispute between an employer and recognised majority union but takes within its wide sweep any dispute or difference between employer and workmen including a minority union of workmen which is

> connected with employment or terms of employment or conditions of labour of workmen as well as the observations made by this Court in Workmen of Dharampal Premchand v. Dharampal Premchand. (1965) 3 SCR 394: AIR 1966 SC 182.)”

In para 17 of the said decision, the Hon'ble Supreme Court concluded the issue by observing that “we have, therefore, no hesitation in holding that neither the Sangh was precluded from raising the demand or the dispute, nor was the Government debarred from making the reference nor was the Industrial Tribunal's competence to go into the dispute and make the award affected in any manner.”

12. I find considerable force in the contention of the learned advocate for respondent No.1 Mrs.Pahwa that the above mentioned decision in the case of Tata Chemicals (supra) would apply in the facts of the present case. In the present case, it is not in dispute that the settlements referred to by the petitioner are settlements arrived at between the petitioner and respondent No.2 Union not during the course of conciliation proceeding. Therefore, despite the settlements having been arrived at by the majority union, respondent No.1 Panchayat is not precluded from proceeding ahead with the industrial

dispute already raised by the Panchayat and pending before the Industrial Tribunal long before the settlements were arrived at. As noted earlier, one of the prime conditions for application of the terms of the settlement in favour of the concerned workmen was that the workmen should sign the settlement. It is not in dispute that the workmen who are members of respondent No.1 Panchayat have not signed the agreement under the settlements nor are they receiving benefits under the settlements. In that view of the matter, the Industrial Tribunal was perfectly justified in not accepting the request of the petitioner herein to consolidate the references and dispose of the same in terms of the settlements. Such a course of action would have precluded respondent No.1 Panchayat from proceeding further with the industrial dispute raised and to have the same adjudicated upon.

13. I am unable to accept the contention of the learned advocate for the petitioner that the settlements in question having been arrived at with the majority Union would bind even the minority union though respondent No.1 Panchayat was not a party to these settlements. I am also unable to uphold the contention of the learned advocate for the petitioner that by an order dated 21st

July 2001, the Industrial Tribunal already ordered to consolidate the proceedings. A perusal of the said order dated 21st July 2001 passed by the Industrial Tribunal makes it clear that the order in question was passed below Ex.30 by which respondent No.2 Union had applied before the Industrial Tribunal for being joined as party in Reference (IT) No.168/00 filed by respondent No.1 Panchayat. It was in this regard that the Industrial Tribunal had made certain passing observations to the effect that to avoid duplication of recording of evidence, etc. it is desirable that all the three references should be consolidated. Such passing remarks cannot be termed as final decision of the Tribunal on the issue since the Tribunal in the said order was deciding only the question of the request of respondent No.2 Union to be permitted to be joined as party in the dispute raised by respondent No.1 Panchayat.

14. This brings me to the discussion of the various decisions relied upon by the learned advocate for the petitioner.

14.1 Reliance was placed on the decision in the case of K.C.P. Limited v. Presiding Officer, (1996) 10 SCC 446. In the said decision, the Hon'ble Supreme Court was

considering the effect of settlement arrived at between the employer and the Union which was representing 29 workers in an industrial dispute concerning their dismissal from service. These 29 workmen who were members of the Union had authorized the Union to represent them before the Conciliation Officer and the dispute was raised by the Union and none of the workmen had raised industrial dispute in their individual capacity under section 2A of the ID Act. The employer and the concerned Union arrived at an understanding whereby the concerned 29 workmen were offered either to accept the reinstatement without backwages or lump-sum amount of Rs.75,000/- with other monetary benefits. 12 out of the 29 workmen concerned did not accept the proposed settlement and sought to pursue the pending industrial dispute themselves. In the meantime, a comprehensive settlement was arrived at and signed by the employer-company and Union. It was in this regard, the Hon'ble Supreme Court observed that the settlement was between the appellant company and respondent No.2 Union which acted on behalf of all the 29 dismissed workmen for whom reference was pending in the Labour Court. Under the circumstances, all the workmen would be ordinarily bound by the settlement unless it is shown that the settlement was ex-facie unfair, unjust or malafide. It was observed

that when an individual workman becomes party to a dispute he is party not independently of the Union which has espoused his cause. It was noted that an industrial dispute was raised by the Union under section 2(k) of the Act and there was no reference under section 2-A of the Act so far as the workmen are concerned. In the said decision, the Hon'ble Supreme Court also noted the distinction between the settlement arrived at under the Act during conciliation proceedings by the parties and the settlement arrived at otherwise than during conciliation proceedings. It was observed that in the said case, settlement arrived at between the parties was not through conciliation proceedings, it would remain binding to the parties to the settlement as per section 18(1) of the Act, but respondent No.2 Union while entering into the settlement acted on behalf of all the 29 dismissed workmen who were its members. It was, therefore, observed that the concerned workmen individually had no locus standi and they were represented by the Union which had signed the settlement on behalf of the members for whom the dispute was raised by the Union. In the peculiar facts of the case, as noted herein-above, the Hon'ble Supreme Court was pleased to uphold the binding effect of the settlement between the Union and the employer Company though the settlement was

not during the course of conciliation proceedings, but was entered into by the Union with the employer company for and on behalf of the concerned workmen. The ratio laid down in the above decision, therefore, would not be applicable to the facts of the present case.

14.2 Reliance was placed in the decision of the Hon'ble Supreme Court in the case of National Engineering Industries Ltd v. State of Rajasthan, (2000) 1 SCC 371. In the said decision, the appellant before the Hon'ble Supreme Court was the employer Company. There were three unions representing the workers employed by the appellant. The Unions made charters of demands in the year 1986 which were identical in almost all respects. Conciliation proceedings were initiated and failure report was submitted by the Conciliation Officer, whereas conciliation settlement was arrived at with the Labour Union and the Staff Union. It was to be in operation for a period of three years ending with 30th September 1989. All the employees including the members of the Workers Union accepted the benefits under the tripartite settlement. Since the State Government did not make any decision on the failure report, the workers Union filed a writ petition seeking the State Government to refer the dispute to the Industrial Tribunal. By its judgment

dated 23rd March 1989, the High Court directed the State Government to take a decision within a specified time on the question whether to make or not to make a reference. However, just a week before the High Court's decision, the State Government had already issued a notification on 17th March 1989 for reference of the dispute relating to the demands raised by the Workers Union. This fact was however, not brought to the notice of the High Court. In the background of these facts, it was contended on behalf of the appellant Company that in view of the tripartite settlement and the Workers Union themselves having taken the advantage of the benefits, there was no dispute pending which could be a subject matter of a reference. It was in this regard that the Hon'ble Supreme Court in para 24 of the judgment observed that if there is no industrial dispute in existence or apprehended, the appropriate Government lacks power to make any reference. A settlement of dispute between the parties themselves is to be preferred where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. It was further observed that there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable. A settlement which is sought to be impugned has to be

scanned and scrutinised. Sub-sections (1) and (3) of Section 18 divide settlements into two categories, namely, (1) those arrived at outside the conciliation proceedings, and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has a limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has an extended application since it is binding on all the parties to the industrial disputes, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter.

It can thus be seen that in the said decision also the Hon'ble Supreme Court noted and recognized the distinction between two classes of settlements, one which is arrived at during the course of conciliation proceedings and another which is arrived at outside the conciliation proceedings. The ratio laid down in the said decision, therefore, would not apply to the facts of the present case especially since the Hon'ble Supreme Court found that even the workmen who were members of the

Workers Union had received the benefits under the settlement.

14.3 Reliance was placed on the decision of the Hon'ble Supreme Court in the case of ITC Ltd. Workers' Welfare Association v. Management of ITC Ltd. (2002) 3 SCC 411. In the said decision, the Hon'ble Supreme Court was, however, concerned with the validity of the settlement entered into in the course of conciliation proceedings and its binding effect. It was in this regard observed that such a settlement would be considered valid if it is found to be just, fair and bonafide and its validity cannot be judged on the touchstone of arbitrariness and discrimination and the entire settlement should be considered as a whole. It was observed that the High Court exercising jurisdiction under Article 226 and 227 of the Constitution should be circumspect and cautions in disturbing the terms of such settlement. In the said decision, in para 23, it was observed that a settlement which is a product of collective bargaining is entitled to due weight and consideration more so when a settlement is arrived at in the course of the conciliation proceedings. It was in this background that the Hon'ble Supreme Court found that the settlement in question which is otherwise valid and

just cannot be held to be suffering from any legal infirmity merely for the reason that one of the clauses in the settlement extends the benefit of Life Pension Scheme only to the employees retiring after a particular date. Exclusion of workmen retiring before that date is no ground to characterize the settlement as unjust and unfair. The ratio laid down in the above mentioned decision of ITC Limited Workers Welfare Association (supra) therefore would not apply to the facts of the present case.

14.4 Reliance was placed on the decision of the Hon'ble Supreme Court in the case of New Standard Engineering Company Limited v. N.L. Abhyankar, (1978) 2 SCC 133. In the said decision, the Hon'ble Supreme Court observed that the question of justness and fairness of the settlement should be examined with reference to the situation as it stood on the date on which it was arrived at. Since in the case on hand, we are not concerned with the justness and fairness of the settlement arrived at, the above decision would have no applicability.

14.5 Much stress was placed by the learned advocate for the petitioner on the decision of the Hon'ble Supreme Court in the case of Herbertsons v. Workmen, AIR 1977 SC

322. A closer scrutiny of the the said decision is called for. In a pending petition before the Hon'ble Supreme Court, the appellant Company filed certain application on which the Hon'ble Supreme Court passed the following order :

> “The number of workmen concerned in this industrial dispute is 210. The appellant employer and the 3rd respondent Union which claims to have 193 members on its rolls have entered into a settlement. The 2nd respondent Union which claims to have about 55 members on its rolls has not yet accepted the settlement. We think it just, therefore, to pass the same kind of preliminary order that was passed in Amalgamated Coffee Estate v. Their Workmen in the following terms:-
>
> “In view of the fact that admittedly, a large number of workmen employed by the appellant have accepted the settlement, is it shown by the 2nd respondent union that the said settlement is not valid and binding on its members and whether the settlement is fair and just?”
>
> “The Industrial Tribunal, Maharashtra, would consider the issue and submit its finding within two months from this date. After the finding is received, the appeal would be set down for hearing. Parties should be allowed to lead evidence.”

Based on the said order, the Tribunal after hearing the parties forwarded its finding to the Hon'ble Supreme Court which read as follows:

> “(1)Respondent 2 the Mumbai Mazdoor Sabha has been able to prove that the disputed settlement is not valid and binding on its members.
>
> (2) The disputed settlement is incomplete to the extent mentioned above.
>
> (3) The scheme of D.A. provided for in the disputed settlement in so far as it affects workmen at or just above the subsistence level is not fair, just and reasonable.
>
> (4) The rest of the disputed settlement is fair, just and reasonable.” That is how this appeal has come up for hearing before us.”

It was on the background of these orders that the Hon'ble Supreme Court considered the question whether the findings of the Tribunal are sustainable. In this regard, the Hon'ble Supreme Court made the following observations :

> “15. Before we proceed further it is necessary to appreciate the implication of the order of this Court passed on December 19, 1974 set out earlier. This order was passed after hearing the parties for some time when the appeal was first called for

hearing on December 19, 1974. From the recitals in the order it is apparent that the parties were prepared to abide by the settlement if the same was fair and just. We are not prepared to accept the position, as urged by the 2nd respondent, that even if the settlement is binding on the parties executing the document, namely, the company and the 3rd respondent representing a large majority of the workmen, since the same is not binding on the members of the Mumbai Mazdoor Sabha Union, howsoever, small the number under section 18(1) of the Industrial Disputes Act, the appeal should be heard on merits. On the other hand, we take the view that after hearing the parties, this Court was satisfied when it had called for a finding of the Tribunal that if the settlement was fair and just it would allow the parties to be governed by the settlement substituting the award. The wording of the issue sent to the Tribunal for a finding clearly shows that there was an onus on the 2nd respondent to show how many workers of the appellant were their members upon whom they could clearly assert that the settlement was not binding under section 18(1) of the Industrial Disputes Act. It cannot be assumed that the parties were not aware of the implications of section 18(1) of the Industrial Disputes Act when the Court passed the order of December 19, 1974. This Court would not have sent the case back only to decide the legal effect of section 18(1) of the Industrial Disputes Act. Since a recognized and registered Union had entered into a voluntary settlement this Court thought that if the same were found to be just and fair that could be allowed to

> be binding on all the workers even if a very small number of workers were not members of the majority Union. It is only in that context after hearing the parties the case was remanded to the Tribunal for a finding on the particular issues set out above."

It was in this background, the Hon'ble Supreme Court observed that when a recognized Union negotiates with an employer, the workers as individual do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognized union which is expected to protect the legitimate interests of the labour, enters into a settlement in the best interests of labour. As noted earlier, the Hon'ble Supreme Court was pleased to discard the consideration of the implication of section 18(1) of the ID Act in the peculiar facts of the case as is highlighted in the above mentioned portion in para 15 of the said judgment. The ratio laid down therein, therefore, would not apply in the present case.

14.6 Reliance was also placed on a decision of this Court dated 22nd July 2004 passed in Special Civil Application No.18188 of 2003. In the said decision, relying on the decision of the Hon'ble Supreme Court in the case of K.C.P. Limited (supra), this Court had

rejected the petition of the workmen. In the said decision also, 14 workers had sought to question the settlement arrived at between the employer and the Union regarding reinstatement of 371 workers. The dispute was raised by the Union on behalf of the workers concerned and the settlement was arrived at between the Union and the employer and was accepted by all but 14 of the 371 concerned workmen. This Court found that as the settlement was not unjust or unfair, it was not open for the workmen concerned to individually pursue their dispute. The ratio laid down in the said decision therefore, would not apply to the facts of the present case.

14.7. Reliance was placed on a Division Bench decision of the Karnataka High Court in the case of Mangalore Ganesh Beedi Workers v. Workmen, 2004 III CLR 944. The question therein was, however, with respect to the justness and fairness of the settlement and the Division Bench found that in absence of any proof of allegation that the settlement was brought about by fraud or coercion and since the settlement was accepted by vast majority of the workmen, the same should be presumed to be just and fair. The said decision of the Division Bench of the Karnataka High Court would not apply to the

facts of the present case in view of the factual difference.

15. In the result, in view of the discussion in the foregoing paragraphs, there is no merit in the petition and the same is therefore rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

16. In view of the order passed in the main matter, the Civil Application does not survive and the same is also disposed of accordingly.

(Akil Kureshi, J.)

(vjn)